IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Someshwar Maliwad
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.411/2001 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 30th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.A.K. Rajvanshi, for the petitioner.
Mr.Rameshwar Dave, Dy.Govt. Advocate for the respondent.

BY THE COURT

In this writ petition the order dated 8/9.11.2001 whereby, the District Collector, Dungapur declined to grant the benefit of leave encasement to the petitioner on the ground that provision for grant of such benefit to those retired compulsorily was made by Government Notification dated 20.08.2001 which is prospective in nature. Since the petitioner was compulsorily

retired on 01.03.2001 prior to issuance of the said notification, such benefit could not be granted to him.

The Division Bench of this Court in the case of Deen Dayal Khunteta Vs. The State of Rajasthan 7 Anr. reported in 1995 RLW (1) (Raj.) 419, while dealing with the controversy held that such benefit could not be denied under Rule 91 (B)(1) even to those retired compulsorily particularly when the same has been allowed to the employees seeing voluntary retirement. There was no justification to create two different classes of the employees. This very view was later reiterated by this Court in Dr.J.K. Jain Vs. The State of Rajasthan & Ors. reported in 1996 (3) WLC (Raj.) 470. Subsequent to the aforesaid Division Bench judgment, Rule 91(b)(1) was amended by the notification dated 20.08.2001 so as to extend such benefit even to those retired compulsorily.

In view of the above, the writ petition is allowed and the respondents are directed to pay to the petitioner the amount of benefit of leave encasement together with interest @ 6% per annum. Compliance of this order be made within a period of three months from the date of service of the order. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-